IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Chetan Ram & Anr. v. Union of India & Ors.

S.B.CIVIL WRIT PETITION NO.2107/2003
under Article 226 of the Constitution of India.

Date of Order : 20th September, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. I.R.Choudhary, for the petitioner.
Mr. V.K.Mathur, for the respondents.

BY THE COURT :

Petitioner Chetan Ram enrolled with Border Security Force (hereinafter referred to as “the BSF”) on 31.12.1966 as Sepoy and retired from service while holding the post of Constable w.e.f. 31.3.1979.

The respondents by a Pension Payment Order No.3889(C) authorised petitioner Chetan Ram for getting pension and after his death for family pension to his wife Smt. Laxmi Devi (petitioner No.2). The respondents stopped payment of pension to petitioner

Chetan Ram after the month of August, 2002 in view of judgment of Hon'ble Supreme Court in the case of Union of India v. Rakesh Kumar, reported in 2002(4) SCC 309, wherein Hon'ble Supreme Court held that no pensionary benefits can be given to the employees of the BSF until and unless they complete 20 years of service as required to be qualifying service under Rule 19 of the Border Security Force Rules (hereinafter referred to as "the BSF Rules"). Aggrieved by the same, present petition for writ is preferred by the petitioners.

The primary issue which arises for consideration in the instant writ petition is that as to whether action of the respondents in stopping the payment of pension to the petitioner is illegal being in violation of principles of natural justice?

It is contended by counsel for the petitioner that in pursuance to Pension Payment Order No.3889(C) the petitioner was authorised to get pension and he was getting the same since 1979. The same was stopped by the respondents without giving any notice to him and the same has effected rights of the petitioner adversely, therefore, the action is required to be declared illegal being violative of principles of natural justice. It is also contended by counsel for the petitioner that as the petitioner was getting pension from last about 23 years, therefore, the equity requires to relax the necessity of completing

qualifying service as provided under Rule 19 of the BSF Rules.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the Pension Payment Order No.3889(C) was erroneously issued and the pension was also erroneously paid to the petitioner as the petitioner at the time of retirement worked only for a period of 12 years and 3 months i.e. less than 20 years of qualifying service as prescribed under Rule 19 of the BSF Rules. Counsel for the respondents to substantiate the contention has placed reliance upon the judgment of Hon'ble Supreme Court in the case of Union of India v. Rakesh Kumar (supra).

Heard counsel for the parties.

It is the position admitted that the petitioner has not completed qualifying service of 20 years as required under Rule 19 of the BSF Rules. Hon'ble Supreme Court in the case of Union of India v. Rakesh Kumar (supra) categorically held that a person is not entitled to claim pension unless he has rendered qualifying service of 20 years. In the present case as the petitioner has not completed 20 years of service, the decision referred above clearly supports the contention as made by the respondents. In view of it I am having no hesitation in holding that

the petitioner is not entitled for getting pension under the BSF Rules. I am also not in agreement with counsel for the petitioner that there was no violation of principles of natural justice as on basis of admitted facts the only conclusion on which can be arrived is that the petitioner is not entitled for pension as he has not rendered 20 years qualifying service. The absence of notice, therefore, shall cause no prejudice to the petitioner and call for no interference. The petitioner also failed to point out any provision and even any circumstance warranting to relax the pre-condition of completing qualifying service for getting pension under the BSF Rules.

In view of above discussion the writ petition is devoid of merit and, therefore, the same is dismissed. The parties are left to bear their own costs.

(GOVIND MATHUR),J.

kkm/ps.